

**STATE OF WASHINGTON  
DEPARTMENT OF HEALTH  
ADJUDICATIVE SERVICE UNIT**

In the Matter of:

SHIIL GROCERY AND HALAL MEAT,  
WIC Retailer Contract #1650W005730(1),

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Appellant.

Master Case No. M2013-1366

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND INITIAL ORDER

**APPEARANCES:**

Shiil Grocery and Halal Meats, by  
Simburg, Ketter, Sheppard & Purdy, LLP (Appellant), per  
James A. Jackson, Attorney at Law

Department of Health Prevention and Community Health Division,  
Office of Nutrition Services, Women, Infants, and Children (WIC)  
Program (Program), by  
Office of the Attorney General, per  
Janis Snoey, Assistant Attorney General

**PRESIDING OFFICER:** John F. Kuntz, Review Judge

A hearing was held in this matter on October 10, 2014, regarding the Appellant's appeal of the WIC Program's Notice of Termination and Disqualification of the Appellant's WIC Retailer Contract #1650W005730, dated November 15, 2013. Termination and Disqualification decision affirmed.

**ISSUES**

- A. Did the Program conduct its inventory audit of documents submitted by the Appellant in a manner consistent with WIC requirements?
- B. Did the Appellant engage in a "pattern" of claiming reimbursement for the sale of WIC foods that exceeds document store inventory of the items during an audit period, and thus commit a violation contained in 7 .C.F.R. 246.12?

- C. Did acceptance of the \$8,779.78 paid by the Appellant preclude the Program from claiming a “pattern” of incidences?
- D. If a pattern is established, does termination/disqualification of the Appellant result in “inadequate participant access” so as to warrant a civil penalty?

### **SUMMARY OF PROCEEDINGS**

At the hearing, the Program presented the testimony of Mohamed Barre, Co-owner of Appellant, Shiil Grocery and Halal Meat; Steven Strong, WIC Program Statewide Operations Section Manager; Melissa Trapp-Petty, WIC Program Fraud and Analytics; and Susan Evan, WIC Program Banking Contract Manager. The Appellant presented the testimony of Mohamed Barre.

The Presiding Officer admitted the following Program exhibits:

- P-1: WIC Contract No. 1650W005730 for the period from April 1, 2012 to March 31, 2015;
- P-2: WIC Shopping Guide;
- P-3: WIC Annual Training Requirements;
- P-4: “Investigative Summary Form”;
- P-5: Letter from Steve Shahan to Hamdi Barre, Shiil Grocery and Halal Meat, dated August 20, 2012;
- P-6: Receipts date-stamped as received by the Program on August 29, 2012;
- P-7: Letter from Stuart Brotherston to Hamdi Barre, Shiil Grocery and Halal Meat, dated March 8, 2013;
- P-8: Receipts date-stamped as received by the Program on April 3, 2013;
- P-9: The Program’s Invoice Tally;

- P-10: “Shiil Grocery and Halal Meat Inventory Audit Report April 2012 to December 2012”, dated September 6, 2013;
- P-11: Letter from Steven Strong to Hamdi Barre, Shiil Grocery and Halal Meat, dated September 6, 2013;
- P-12: Email from Appellant to Stuart Brotherston, dated October 7, 2013;
- P-13 Series of email exchanges between Michal Murphy, Steven Strong, and others, starting date September 24, 2013 to ending date November 21, 2013, in reverse chronological order;
- P-14: Letter from Steven Strong to Hamdi Barre, Shiil Grocery and Halal Meat, dated October 9, 2013;
- P-15 Spreadsheet titled “Shiil Grocery Halal Meat – 2<sup>nd</sup>”;
- P-16: Letter from Steven Strong to Hamdi Barre, Shiil Grocery and Halal Meat, dated November 15, 2013; and
- P-17: Participant Access Analysis for Shiil Grocery and Halal Market, dated May 14, 2014.

The Presiding Officer admitted the following Respondent exhibits:

- A-1: “Shiil Grocery and Halal Meat Inventory Audit Report April 1, 2012 to December 31, 2012”, dated September 6, 2013; and
- A-2: Redacted version of the November 25, 2013 WIC Retailer Contract, Inventory Audit Results, Notice of Termination and Disqualification.

## **I. FINDINGS OF FACT**

1.1 The federal Special Supplemental Nutrition Program provides qualifying pregnant, postpartum, or breastfeeding women, infants, and young children with supplemental food benefits through the WIC program. See 7 CFR 246. The federal Special Supplemental Nutrition program provides the food benefits through the payment of cash grants to the states. The state then distributes the food benefits through one of

three types of food delivery systems (retail; home delivery; or direct distribution) to accomplish the goals of the WIC program. The state of Washington uses the retail delivery system, in which qualified WIC recipients receive WIC vouchers or WIC checks. The WIC check specifies on the face of the document what types of foods (for example, eggs, milk, baby food, infant formula, and fresh fruits and vegetables) the WIC recipient can purchase from the WIC retailer. See Exhibit P-2, page 18 of 21 (example of WIC check). The WIC retailer then redeems the value of the voucher or WIC check by submitting it to the WIC Program's banking system.

12 Mohamed and Hamdi Barre own Shiil Grocery and Halal Meat (Appellant), which is located on Martin Luther King Way, Seattle, Washington. The Appellant is one of six authorized WIC Retailers in the relevant geographic area (a one-mile radius of the Appellant's store as defined by the 98108 zip code) and sells supplemental food items to qualifying WIC recipients. See Exhibit P-17, pages 2 and 3. The Appellant entered into the WIC retailer contract with the WIC Program in March 2012. See Exhibit P-1. As an authorized WIC retailer, the Appellant agreed to comply with all of the contract's terms and conditions. The terms and conditions included the Appellant's agreement to maintain inventory records and to provide the WIC representative with copies of the Appellant's inventory records upon request. See Exhibit P-1, page 8 (Inventory Management).

13 On August 20, 2012, the WIC Program requested the Appellant's records to determine if the Appellant's store possessed sufficient WIC foods (those foods authorized in the WIC Shopping Guide) for redemption by WIC recipients upon a

submission of a WIC check. The WIC Program's request to the Appellant was one of several random audits (known as inventory audits) for that purpose.<sup>1</sup> In fact, the WIC Program specifically chose the Appellant for the inventory audit because the Appellant was identified as a "high risk" vendor. The WIC Program uses a computer algorithm<sup>2</sup> to identify high risk vendors based on identified Program criteria.<sup>3</sup> The Program criteria include high redemption providers (providers with a large volume of WIC clients in comparison to other like-sized providers<sup>4</sup>) and low variance providers (redeeming a large percentage of WIC checks for the maximum amount allowable on the face of the WIC check). The Program requested the Appellant "submit copies of all itemized sales receipts for all purchases of store inventory you made during the period from January 1, 2012 through July 31, 2012." See Exhibit P-5. The Appellant provided all of the records in the store's possession in response to the WIC Program request. See Exhibit P-6.

#### 1.4 The WIC Program's inventory audit process did not include, nor

<sup>1</sup> An inventory audit is part of a compliance investigation. Federal rules require the WIC Program conduct compliance investigations of at least five percent of the number of WIC retailers per year. See 7 CFR 246.12(j)(4).

<sup>2</sup> "Algorithm" is defined as a predetermined set of instructions for solving a specific problem in a limited number of steps. See Webster's New College Dictionary, page 35 (copyright 2009). The Appellant submitted no evidence to contest the validity of the WIC Program's algorithm.

<sup>3</sup> The criteria include: (1) commodity description; (2) redemptions by month; (3) adjusted redemptions per month; (4) receipts by month and total receipts; (5) storages (the difference between the WIC food items the store claimed to sell and the items in the store's inventory); (6) the unit price for each audited WIC food taken from the unit price list the store supplies; and (7) overcharges. See Exhibit P-10 (page 3).

<sup>4</sup> WIC Retail provider size is measured by the square footage of the store and the number of cash registers the store contains. The Appellant's store is about 1,104 square feet and has one cash register. See Exhibit P-10, page 4.

was it required to include, a physical inspection of the Appellant's store. See 7 C.F.R. 246-.12(j)(3) and 7 C.F.R. 246.2 ("inventory audit" means the examination of food invoices or other proofs of purchase to determine whether a vendor has purchased sufficient quantities of supplemental food to provide recipients the quantities specified on food instruments redeemed by the vendor during a given period of time). The inventory audit process is report driven, that is the WIC Program relies on reports it receives to determine the Appellant's compliance or non-compliance regarding the inventory requirement. See Exhibit P-10, pages 3 and 4.<sup>5</sup> To provide fairness in the audit process, the WIC Program incorporates several assumptions. See Exhibit P-10, Page 4. These assumptions include, but are not limited to:

- A. The retailer sold all WIC foods itemized on inventory purchase receipts in exchange for WIC checks, unless the receipts show the store purchased more of a WIC food than had been redeemed.
- B. Retailers purchase inventory on a rotational/revolving basis based on a product's shelf life. The assumption is the store would not purchase additional or new stock if the store had sufficient inventory.
- C. The WIC Program does not include the redemptions for the first month of the inventory period because the store may have purchased the inventory in the preceding month. The WIC Program also gives the benefit of the doubt to the store by including all inventory purchased in the last month of the audit period, even though many of the food items are more likely to be sold in the following month.

<sup>5</sup>The Appellant provided a second version of the September 6, 2013 Inventory Audit Report created by the WIC Program, which had some inconsistencies relating to the amount of the Program's overpayment claim and identifying a different WIC retailer. Compare Exhibit P-10 to Exhibit A-1. WIC Program Compliance Officer Melissa Trapp-Petty testified that the Inventory Report is a template and that the relevant claim amount and/or WIC retailer is substituted as appropriate. Given that the Appellant was provided with the correct claim amount, the Presiding Officer finds the discrepancy is not relevant to the outcome of this proceeding.

- D. The inventory analysis for certain foods (such as fruits and vegetables) is not based solely on records because the WIC checks are for a dollar amount rather than a specific quantity.
- E. WIC customers need not purchase all items on the WIC check. Partial redemption rates are based on Department of Agriculture research. For example, the WIC Program estimates that when a food quantity purchase report shows the store redeemed 120 boxes of milk for a given month, the store actually sold 104 boxes (or an 86.8 percent of the redemption).
- F. The WIC Program uses the lowest unit price for a food item if the retailer has listed more than one unit price in calculating any overcharge.

15 On March 8, 2013, the WIC Program issued a second letter notifying the Appellant that the Program was expanding the time period covered by the inventory audit. See Exhibit P-7. The Program's stated reason for the expanded audit period was that the Appellant's records to the Program were inadequate to justify the WIC sales in the earlier January – July 2012 period. The WIC Program requested the Appellant "submit copies of all itemized sales receipts for all purchases of store inventory you made from August 1, 2012 through December 31, 2012." The Appellant submitted additional itemized sales receipts to the WIC Program in response to the March 8, 2013 request. See Exhibit P-8. The Appellant provided all of the relevant records to the WIC Program in response to the Program's March 2013 request.

16 After receiving all of the Appellant's 2012 records, the WIC Program chose the April – December 2012 period for the inventory audit, and the Program determined that the Appellant overcharged the WIC Program in the amount of \$10,670.59. In other words, the WIC Program compared the WIC checks the Appellant redeemed against the Appellant's available inventory to redeem the WIC checks. A review of the checks redeemed to the available inventory showed the Appellant was deficient in several

supplemental food categories. See Exhibit P-15.<sup>6</sup> On September 5, 2013, the WIC Program issued a Notice of Termination and Disqualification to notify the Appellant that it owed that amount and established a claim for \$10,670.59. See Exhibit P-11. The Notice advised the Appellant that they had an opportunity to justify or correct the violations or errors contained in the inventory report. The Notice of Termination and Disqualification further advised the Appellant:

Within thirty (30) days of receipt of this letter if you fail to either (1) repay the Department the value of the claim or, (2) justify your records or correct any errors, the Department will terminate your WIC Retailer Contract without further notice. **The termination is effective close of business on the thirtieth (30) day of receipt of this letter.** (Emphasis supplied in the original).

The September 2013 Notice of Termination and Disqualification advised the Appellant that any appeal of the WIC Program action must be filed within 28 days.

1.7 On October 7, 2013, the Appellant submitted the \$10,670.59 within the 30-day time period. Mr. Barre (the co-owner of the Appellant store) notified the Program that he was in agreement with the WIC Program's inventory audit except for one month, December 2012. See Exhibit P-12. The Appellant's records showed three issues: (1) that it did not redeem 252 WIC checks in December; (2) there was an error regarding the calculation of tuna sales by the store (the Appellant charged \$1.29 for a can of tuna and did not sell the tuna for \$1.29 an ounce); and (3) that the Appellant was charged for selling baby food meat (that is, jars of baby food that contain meat), even though the Appellant had an exemption not to sell that item. See Exhibit P-12.

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<sup>6</sup> Categories with negative numbers in the shortage column reflect those items where the Appellant did, in fact, have sufficient inventory. See Exhibit P-15, page 2 (entries relating to milk).



Following the Appellant's request to justify/correct the records, the WIC Program reduced its claim amount to \$8,779.78.

1.8 The WIC Program, consistent with its previous practice and consistent with the language in the September 2013 Notice of Termination and Disqualification, believed that the Appellant's timely payment would allow the Appellant to continue to participate as a WIC Retailer. However, the WIC Program's September 2013 Notice of Termination and Disqualification was incorrect, as the Appellant's timely payment of the claim amount could not forestall disqualification in the Appellant's case. The United States Department of Agriculture (the federal agency in charge of the Special Supplemental Nutrition Program) wrote to the WIC Program that if the Appellant had a pattern<sup>7</sup> of claiming reimbursement of an amount of supplemental food items in excess of the store's documented inventory, then the WIC Program *must* disqualify the Appellant for a period of three years in addition of the payment of the claim. See Exhibit P-13.

1.9 As set forth in Paragraph 1.7 above, the WIC Program reduced its overpayment claim amount. Based on the adjustment, the WIC Program issued a Notice of Termination and Disqualification to the Appellant on November 15, 2013. The WIC Program adjusted the overpayment claim and refunded the Appellant in the amount of \$1,890.91 (\$10,670.59 minus \$8,779.78). Unlike the September 2013 Notice of Termination and Disqualification, the WIC Program's November 15, 2013 Notice of

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<sup>7</sup> A "pattern" means more than one documented incident of the same type of violation within a 36 month period. WAC 246-790-105(4).

Termination and Disqualification informed the Appellant that its store was disqualified from participation in the WIC Program for a minimum period of three years, commencing on November 15, 2013. The Appellant filed an appeal of the WIC Program notice on December 12, 2013.

1.10 Based on the totality of the evidence, the Presiding Officer finds that the Appellant's store was out of compliance with the WIC contract requirements. The store did not have sufficient inventory to support the amount of WIC foods the store redeemed through the submission of WIC checks during the April – December 2012 period. There was a pattern (that is, more than one violation) during the relevant period based on the Appellant store's inventory records. See Exhibit P-15.

## **II. CONCLUSIONS OF LAW**

21 The Secretary of Health (and by designated authority, the Presiding Officer) has jurisdiction over the Appellant and the subject of this proceeding. 7 C.F.R. 246.12, chapter 34.05 RCW, and chapter 246-790 WAC.

2.2 The WIC Program bears the burden of proving the allegations set forth in the Notice of Termination and Disqualification by a preponderance of the evidence. WAC 246-10-606.

23 WAC 246-790-105 states in relevant part:

- (1) When a retailer is out of compliance with the requirements of 7 CFR 246.12, this chapter, or the contract, the department may initiate appropriate enforcement action which may include notices of violation, unless the department determines that notifying the retailer would compromise the investigation; claims for reimbursement; and disqualification.

- (2) The department shall disqualify an authorized retailer for violations stated in 7 C.F.R. 246.12(l).

....

- (4) A “pattern” of violations means more than one documented incident of the same type of violation within a 36 month period.
- (5) An authorized retailer’s contract is terminated on the effective date of a disqualification.

2.4 7 C.F.R. 246.12(l) states that the state agency *must* disqualify a vendor for three years for: ... (B) a pattern of claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store’s documented inventory of that supplemental food item for a specified period of time. (Emphasis added).

2.5 Based on the totality of the evidence, the Presiding Officer concludes that the Appellant’s store was out of compliance with the requirements of his WIC contract. The Appellant’s store did not have sufficient inventory to support the amount of WIC foods it redeemed through the submission of WIC checks during the April – December 2012 period. There was a pattern of violations (that is, more than one documented incident of the same type of violation within the audit period). The Appellant admitted it provided all of the records in the store’s possession, and those records established the pattern.<sup>8</sup>

### III. ORDER

Based on the foregoing Procedural History and Findings of Fact, and Conclusions of Law, it is ORDERED:

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<sup>8</sup> See Finding of Fact 1.6; see also Exhibit P-15.

3.1 The WIC Program Notice of Termination and Disqualification dated November 15, 2013 is AFFIRMED, and the Appellant's WIC Retailer's contract #1650W005730(1) is TERMINATED.

3.2 The WIC Program claim against the Appellant in the amount of \$8,779.78 is AFFIRMED.

3.3 The Appellant is DISQUALIFIED as a WIC Retailer for a period of three years.

Dated this 3 day of November, 2014.

\_\_\_\_\_/s/\_\_\_\_\_  
JOHN F. KUNTZ, Review Judge  
Presiding Officer

#### **NOTICE TO PARTIES**

When signed by the presiding officer, this order shall be considered an initial order. Chapter 109, law of 2013 (Sec. 3); WAC 246-10-608.

Any party may file a written petition for administrative review of this initial order stating the specific grounds upon which exception is taken and the relief requested. WAC 246-10-701(1).

A petition for administrative review must be served upon the opposing party and filed with the Adjudicative Clerk Office within 21 days of service of the initial order.

WAC 246-10-701(3). "Filed" means actual receipt of the document by the Adjudicative Clerk Office. RCW 34.05.010(6). "Served" means the day the document was deposited in the United States mail. RCW 34.05.010(19). The petition for administrative review must be filed within 21 calendar days of service of the initial order with:

Adjudicative Clerk Office  
Adjudicative Service Unit  
P.O. Box 47879  
Olympia, WA 98504-7879

and a copy must be sent to the opposing party. If the opposing party is represented by counsel, the copy should be sent to the attorney. If sending a copy to the Assistant Attorney General in this case, the mailing address is:

Agriculture and Health Division  
Office of the Attorney General  
P.O. Box 40109  
Olympia, WA 98504-0109

**Effective date: If administrative review is not timely requested as provided above, this initial order becomes a final order and takes effect, under WAC 246-10-701(5), at 5:00 pm on . Failure to petition for administrative review may result in the inability to obtain judicial review due to failure to exhaust administrative remedies. RCW 34.05.534.**

Final orders will be reported as required by law. Final orders will be placed on the Department of Health's website, and otherwise disseminated as required by the Public Records Act (Chap. 42.56 RCW). All orders are public documents and may be released.

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